

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAN A. VITALE)	
Claimant)	
VS.)	
)	Docket No. 1,001,126
LAWRENCE BATTERY COMPANY)	
Respondent)	
AND)	
)	
AIG CLAIM SERVICES)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the January 25, 2006, Order entered by Administrative Law Judge Brad E. Avery in which the Judge denied respondent and its insurance carrier's request to extend their terminal date. They also appealed the January 18, 2006, Order for Medical Treatment, which granted claimant post-award medical benefits. After considering the parties' arguments as set forth in their briefs, the Board placed these appeals on its summary docket for disposition without oral argument.¹

APPEARANCES

Neil A. Dean of Topeka, Kansas, appeared for claimant. Matthew S. Crowley of Topeka, Kansas, appeared for respondent and its insurance carrier.

ISSUES

This is a post-award request for additional medical benefits.

While the request for additional medical benefits was pending before the Judge, respondent and its insurance carrier requested additional time to present evidence on that issue. Nonetheless, without addressing the request to extend their terminal date, on January 18, 2006, Judge Avery entered an Order in which he granted claimant's request for

¹ March 2, 2006, is the date arguments were presented to the Board for purposes of K.S.A. 2005 Supp. 44-551(b)(1).

additional medical benefits. And on January 25, 2006, Judge Avery entered an Order that denied respondent and its insurance carrier's request to extend their terminal date.

Respondent and its insurance carrier contend Judge Avery erred. They argue the Judge selected Dr. Joseph G. Sankoorikal to evaluate claimant to determine if he needed additional medical treatment for his work-related low back injury. But they allege they did not receive the doctor's report until after their December 30, 2005, terminal date had expired.

Accordingly, due to the tardiness of the doctor's report, respondent and its insurance carrier contend good cause existed to extend their terminal date. Consequently, they request the Board to set aside the January 18, 2006, Order, which granted claimant additional medical benefits, and to remand this proceeding to the Judge with directions to extend their terminal date and to allow them to present Dr. Sankoorikal's deposition testimony.

In the alternative, respondent and its insurance carrier request the Board to reverse the January 18, 2006, Order for Medical Treatment because claimant has allegedly failed to satisfy his burden of proof. They argue Dr. Sankoorikal's opinions, which were set forth in his written report, were not credible.

Conversely, claimant contends both Orders should be affirmed. Claimant argues respondent and its insurance carrier contributed to the delay in Dr. Sankoorikal's report as they caused claimant's exam to be postponed from November 18, 2005, to December 2, 2005. Accordingly, claimant contends the Judge appropriately denied respondent and its insurance carrier's request to extend their terminal date. Moreover, claimant argues the attack on Dr. Sankoorikal's report is without merit. And in the event respondent and its insurance carrier are permitted to introduce additional evidence, claimant requests additional time to present evidence.

The issues before the Board on these two appeals are:

1. Did the Judge err by denying respondent and its insurance carrier's request to extend their terminal date?
2. If not, did claimant establish his present need for medical treatment is the direct result of the work-related accident and resulting low back injury claimant sustained in a series of micro-traumas that culminated on November 12, 2001?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidentiary record and considering the parties' arguments, the Board finds and concludes this matter should be remanded to the Judge to allow the parties

to present additional evidence concerning claimant's request for additional medical benefits. Moreover, the January 18, 2006, Order for Medical Treatment should be set aside.

At the October 26, 2005, hearing, Judge Avery advised he would appoint Dr. Sankoorikal to examine claimant to determine whether claimant needed pain management services as a result of his work-related injuries. At that hearing, the Judge also set the parties' terminal dates – November 30, 2005, for claimant and December 30, 2005, for respondent and its insurance carrier.

Claimant's counsel argues that claimant's appointment with Dr. Sankoorikal had to be rescheduled from November 18 to December 2, 2005, as respondent and its insurance carrier's attorney failed to deliver the appropriate medical records to the doctor's office before the appointment. Nonetheless, the doctor authored a report entitled Independent Medical Exam that is dated December 2, 2005, and addressed to claimant's attorney at an incomplete address. Moreover, the records from the Division of Workers Compensation (Division) indicate the Division did not receive the report until January 3, 2006.

Before Judge Avery entered the January 18, 2006, Order for Medical Treatment, respondent and its insurance carrier had requested the Judge to extend their terminal date. Respondent and its insurance carrier produced a copy of a Motion for Extension of Terminal Date that indicates the Division received the Motion on January 13, 2006. That document also contains a Certificate of Service that certifies the Motion was hand delivered to the Division on January 13, 2006, and that a copy was mailed to claimant's attorney on the same date.

Consequently, when the Judge entered the January 18, 2006, Order for Medical Treatment, respondent and its insurance carrier's request for additional time to present evidence was still pending. After respondent and its insurance carrier's attorney wrote the Judge regarding their request for an extension, the Judge issued the January 25, 2006, Order, which denied their request.

The Board finds neither the Judge nor respondent and its insurance carrier's attorney received Dr. Sankoorikal's December 2, 2005, medical report until after the terminal dates had expired. Accordingly, the parties did not have a reasonable opportunity to address or challenge the opinions expressed by the doctor.

This is a post-award proceeding for additional medical treatment under K.S.A. 44-510k, which states the hearing shall be conducted as provided in K.S.A. 44-523. And the latter statute states the Division is not bound by technical rules of procedure but that the parties shall be given a reasonable opportunity to be heard and to present evidence.

The director, administrative law judge or board shall not be bound by technical rules of procedure, but shall give the parties reasonable opportunity to be heard and to

present evidence, insure the employee and the employer an expeditious hearing and act reasonably without partiality.²

Moreover, K.S.A. 44-523(b) addresses terminal dates, which may be extended for good cause shown.

Under these unusual facts, the Board finds the January 18, 2006, Order for Medical Treatment should be set aside and this proceeding remanded to the Judge for further proceedings. It appears neither the Judge nor respondent and its insurance carrier's attorney received Dr. Sankoorikal's medical report before all the terminal dates had expired. Consequently, good cause exists to extend respondent and its insurance carrier's terminal date to challenge the doctor's findings.

WHEREFORE, the Board sets aside the January 18, 2006, Order for Medical Treatment and remands this claim to the Judge for further proceedings. On remand the Judge should reschedule the parties' terminal dates and allow them the opportunity to present additional evidence regarding whether claimant's need for additional medical benefits is related to his work-related accident. The January 25, 2006, Order is reversed.

IT IS SO ORDERED.

Dated this ____ day of April, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Neil A. Dean, Attorney for Claimant
Matthew S. Crowley, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

² K.S.A. 44-523(a).